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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SEEDER TREE COMPANY, INC., a  
Washington corporation,

Plaintiff,

v.

DANIEL GLICKMAN, the Secretary  
of Agriculture; UNITED STATES  
DEPARTMENT OF AGRICULTURE,  
UNITED STATES FOREST  
SERVICE,

Defendants,

and

FRIENDS OF THE COLUMBIA  
GORGE,

Intervenor

NO. C99-5034(RJB)FDB

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This action came on for trial and was tried on March 28, 2000, without a jury. Stephen J. Bean, Esq. and Cecilia M. Clynych, Esq. appeared as counsel for plaintiff. Brian C. Kipnis, Assistant United States Attorney, appeared as counsel for defendants. Gary Kahn, Esq., appeared as counsel for intervenor. Having heard the testimony, examined the evidence submitted by the parties, and heard the arguments of their counsel, and this cause having been submitted for decision, the Court, being fully advised, makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Seeder Tree Company, Inc. is the owner of 240 acres of forest land located within Skamania County, Washington, known as the Augspurger Mountain property. The Augspurger Mountain property is located within the Special Management Area ("SMA") of the Columbia River Gorge National Scenic Area (CRGNSA). By virtue of its location within

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1 the SMA, the Augspurger Mountain property is subject to certain land use restrictions  
2 including limitations on logging practices.

3 2. In late 1994, the family of the previous owner of the Augspurger Mountain  
4 property, Andrew Holman, approached the Forest Service about a possible sale of the  
5 property. At the same time, the Holman family was marketing the property through a real  
6 estate agent.

7 3. A series of meetings and conversations took place in May, 1995 and June, 1995  
8 between an interested purchaser of the Augspurger Mountain property, David Thompson,  
9 Vice President of Seeder Tree Company, and the Forest Service. Mr. Thompson let it be  
10 known that if Seeder Tree Company purchased the property from the Holman family, it would  
11 be interested in selling its property to the Forest Service if the transaction could be  
12 accomplished quickly. Seeder Tree Company wished to have a near simultaneous conveyance  
13 of the Augspurger Mountain property to the Forest Service if that was possible. Given the  
14 time frame envisioned by Seeder Tree Company the parties focused on a "tripartite land  
15 exchange" as the method of acquisition most likely to meet Seeder Tree Company's needs.  
16 Although Mr. Thompson was also encouraged to make a "Section 8(o) offer,"<sup>1</sup> Mr. Thompson  
17 rejected such an idea because Seeder Tree Company was not interested in holding on to the  
18 property for three years.

19 4. On October 18, 1995, sale of the Augspurger Mountain property to Seeder Tree  
20 Company closed at a sales price of \$2 million.

21 5. Although the parties agreed upon a general schedule which envisioned the  
22 signing of an "exchange agreement" by November 1, 1995, problems with the appraisal  
23 delayed the acquisition process. Ultimately, the appraisal, which placed a value on the  
24 property of \$2.5 million, was approved by the Forest Service on December 15, 1995.

25 6. The next significant step was for the Forest Service to seek the approval of the  
26 Skamania County Commissioners for the land exchange as required by national Forest Service  
27 policy. However, before a meeting with Skamania County could take place, Seeder Tree  
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<sup>1</sup>See 16 U.S.C. § 544f(o), discussed *infra*.

1 Company asked to meet with the Forest Service concerning the Augspurger Mountain  
2 property. This meeting, which took place on January 12, 1996 at the CRGNSA headquarters  
3 in Hood River, Oregon, was attended by Mr. Thompson, Joseph H. Schreiner, President of  
4 Seeder Tree Company, and Art Carroll, Ed Medina and Cyndi Swanson of the U.S. Forest  
5 Service. The meeting was stormy. Mr. Schreiner, who had not been previously involved in  
6 any of the discussions between Seeder Tree Company and the Forest Service, was upset with  
7 the Forest Service because he did not feel that it was living up to commitments it had made to  
8 his company. Mr. Schreiner was angry because he felt his company had been misled. At  
9 several points he threatened to clear-cut the property at the first opportunity. The Forest  
10 Service personnel explained the work that had been completed towards accomplishing a  
11 tripartite exchange and the steps remaining. The Forest Service expressed optimism that the  
12 Skamania County Commissioners would approve the exchange and the transaction could be  
13 completed in March.

14 7. The possibility of Seeder Tree making a section 8(o) offer was also discussed at  
15 the January 12, 1996 meeting. The Forest Service personnel posed as an option that Seeder  
16 Tree make a section 8(o) offer. The Forest Service personnel produce paperwork containing  
17 the Forest Service policy on 8(o) offers, and a form intended to facilitate the making an 8(o)  
18 offer.

19 8. *Mr. Schreiner testified that in the course of the discussions he verbally agreed to*  
20 *make a section 8(o) offer. His testimony was not entirely credible. Mr. Thompson testified*  
21 *that he was uncertain as to whether Mr. Schreiner had made a clear verbal 8(o) offer. Mr.*  
22 *Medina and Ms. Swanson of the Forest Service testified that Mr. Schreiner had not made an*  
23 *8(o) offer.*

24 9. I must find, especially in light of Seeder Tree's prior reluctance to consider the  
25 section 8(o) acquisition process, that neither Mr. Schreiner nor Mr. Thompson made an  
26 unambiguous offer under section 8(o) during the meeting on January 12, 1996.

27 10. At the conclusion of the meeting, the parties agreed to move forward with the  
28 tripartite exchange process, although Mr. Schreiner demanded that the acquisition be

1 completed within the next few months. Mr. Schreiner asserted that Seeder Tree Company had  
2 a right to harvest the property at any time and he threatened that Seeder Tree Company would  
3 simply move ahead and clear-cut the property if he determined that the Forest Service was not  
4 moving fast enough.

5 11. On February 26, 1996, the County notified the Forest Service that it had decided  
6 to reject the tripartite land exchange proposal for the Augspurger Mountain property. This  
7 rejection effectively killed the tripartite exchange process as a potential vehicle for Forest  
8 Service acquisition of the Augspurger Mountain property.

9 12. Despite this setback, the parties continued to explore other ways to accomplish a  
10 purchase of the property, in whole or in part, by the Forest Service. On July 1, 1996, David  
11 Tilton, a Forest Service employee, contacted David Thompson to ask him whether he would  
12 be interested in submitting a section 8(o) offer to the Forest Service. Mr. Thompson indicated  
13 that Seeder Tree Company did not want to wait three years for the Forest Service to acquire  
14 the property so it preferred to explore other options.

15 13. Subsequent plans to have the Forest Service acquire the property in whole or in  
16 part at a reduced value following a Seeder Tree Company timber harvest in accordance with  
17 SMA restrictions also came to naught when Seeder Tree Company determined that it was not  
18 in its financial best interest to harvest the property at that point in time. On March 7, 1997, in  
19 a telephone conversation with Forest Service employee Ed Medina, David Thompson  
20 indicated that he intended to send a letter to the Forest Service setting forth Seeder Tree's "last  
21 offer" to sell the Augspurger Mountain property to the Forest Service without a timber  
22 harvest. Mr. Thompson indicated that he was contemplating making this offer under section  
23 8(o). However, no such letter was ever received by the Forest Service.

24 14. On September 14, 1997, Mr. Thompson sent a letter to the Forest Service  
25 proposing a property exchange, concluding: "This proposal is a reiteration of our offer to sell  
26 or trade to the Forest Service and in no way do we want it to conflict with our 8o status."  
27 Plaintiff's Exhibit 11. The plaintiff's counsel had been advised by the Forest Service one  
28 month previously that it did not consider that any 8(o) offer was on the table. Defendant's

1 Exhibit A-17. The letter of September 14, 1997, is self-serving, and lacks significant weight.

2 15. At no time during the January 12, 1996 meeting at Hood River, or at any other  
3 time, did Seeder Tree Company make a plain and unambiguous "section 8(o) offer" of the  
4 Augspurgen Mountain property.

5 16. To the extent that any of the following Conclusions of Law are deemed to be  
6 findings of fact, they are hereby incorporated into the statement of Findings of Fact.

### 7 CONCLUSIONS OF LAW

8 1. Plaintiff has brought this action under the Columbia River Gorge National Scenic  
9 Area Act. 16 U.S.C. §§ 544-544p. The Court has jurisdiction under 16 U.S.C.  
10 §§ 544m(b)(5)(C).

11 2. 16 U.S.C. § 544f(o) provides a special mechanism for private landowners in the  
12 Special Management Area of the National Scenic Area to tender a "bona fide offer to sell at  
13 fair market value or otherwise convey" their land to the Secretary. Unlike a conventional  
14 offer to sell which has no legal effect if not accepted by the offeror, a "section 8(o) offer," if  
15 unaccepted by the Secretary within three years, causes the applicable special management area  
16 land use ordinance adopted by the relevant county to be "suspended" as to such property. In  
17 Stevenson v. Rominger, 909 F. Supp. 779 (E.D. Wash. 1995), the Court opined that "[t]he  
18 evident purpose of this three year period is to foster the negotiation process between the  
19 government and the landowner and also to give the government sufficient time to decide  
20 whether or not it wants to keep the landowner's specific parcel as SMA land." Id. at 784-785.  
21 The Court also recognized that the section 8(o) process imposes hardships on the landowner as  
22 well as the Forest Service because, regardless of when the Forest Service makes its initial  
23 money offer after a property is offered for sale under 16 U.S.C. § 544f(o), a landowner must  
24 wait three years before seeking a judicial determination that the Forest Service's money offer  
25 was less than fair market value. Id. at 785.

26 3. Nothing obligates an owner of property within an SMA of the Columbia River  
27 Gorge National Scenic Area who is interested in selling his property to the Forest Service to  
28 use the mechanism of 16 U.S.C. § 544f(o). Landowners are free to offer their properties for

1 sale to the Forest Service through conventional offers which do not involve the constraints of  
2 16 U.S.C. § 544f(o). The landlord bears the burden of initiating an offer under this section,  
3 and the plaintiff here has the burden of proof that such an offer was made.

4 4. Seeder Tree Company did not prove by a preponderance of the evidence that it  
5 made a clear and unambiguous bona fide offer to the Forest Service under 16 U.S.C.  
6 § 544f(o) at the January 12, 1996 meeting.

7 5. While it is undoubtedly true that Seeder Tree Company offered its property for  
8 sale to the Forest Service, because Seeder Tree Company did not make a proper section 8(o)  
9 offer to sell its property to the Forest Service on January 12, 1996, the applicable special  
10 management area land use ordinance adopted by the relevant county has not been suspended as  
11 to the Augspurger Mountain property.

12 6. To the extent that any of the foregoing Findings of Fact are deemed to be  
13 conclusions of law, they are incorporated into these Conclusions of Law.

14 DATED this 30 day of March, 2000.

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18 FRANKLIN D. BURGESS  
19 United States District Judge  
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United States District Court  
for the  
Western District of Washington  
March 30, 2000

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:99-cv-05034

True and correct copies of the attached were mailed by the clerk to the following:

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